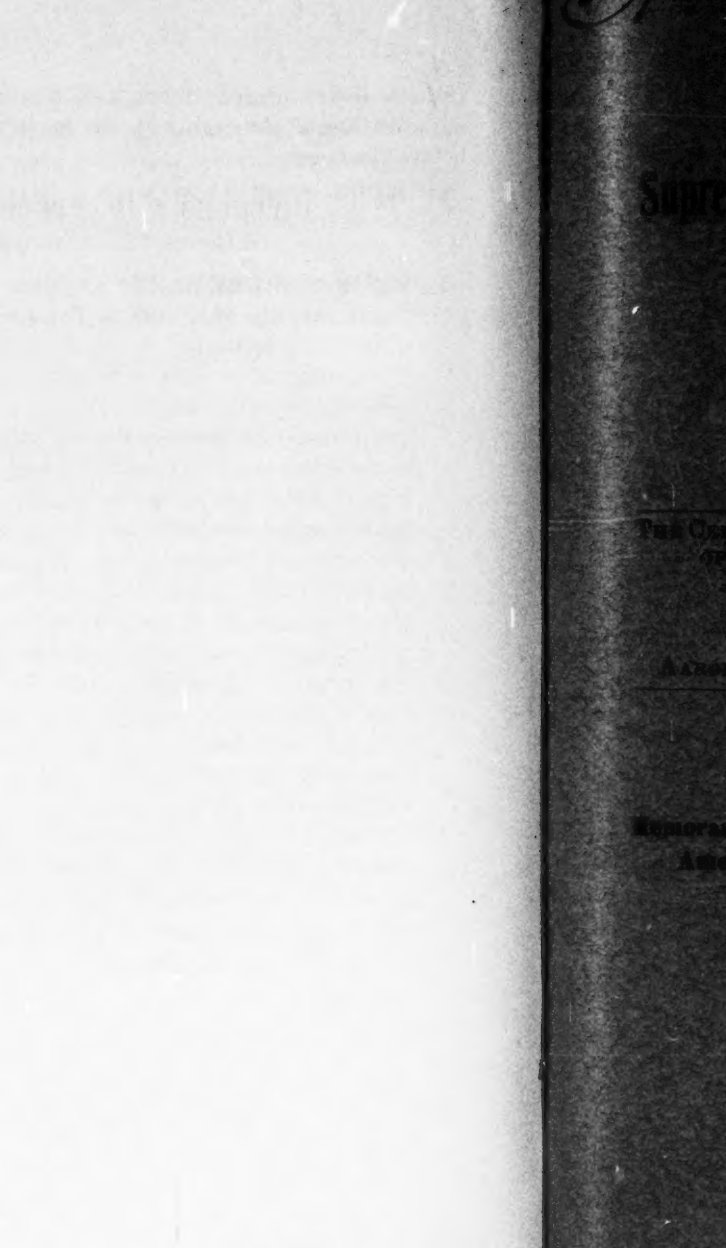

OCTOBER TERM, 1897.

No. 34.

CENTRAL NATIONAL BANK OF BOSTON ET AL.,
Plaintiffs in Error,
against
THOMAS R. STEVENS ET AL.

Memorandum for Plaintiffs in Error, on Motion to Amend the Mandate to the Court of Appeals of the State of New York.

CHARLES E. PATTERSON,
Of Counsel.

William Boyd, Printer, 395 Broadway, Albany.

Supreme Court of the United States.

OCTOBER TERM, 1897.

No. 38.

THE CENTRAL NATIONAL BANK OF BOSTON ET. AL.,
Plaintiffs in Error,

against

AARON R. STEVENS ET AL.

Memorandum for Plaintiffs in Error on Motion to Amend the Mandate.

The mandate orders thus:

"It is now here ordered and adjudged by this "court that the judgment of the said Court of Ap- "peals in this cause, be and the same is hereby "reversed, with costs; and that the said appellants "recover against the said respondents, Aaron R. "Stevens et. al., one thousand and forty-seven "dollars and seventy cents, for their costs herein "expended, and have execution therefor.

"And it is further ordered, that this cause be, and "the same is hereby, remanded to the said Court of "Appeals for further proceedings not inconsistent "with the opinion of this court."

The opinion of Mr. Justice Shiras concludes with these words:

"The conclusions we have reached are that the "judgment of the Supreme Court of New York and "of the Court of Appeals affirming the same are er- "roneous in so far as they command the Central "National Bank of Boston, The Massachusetts "Mutual Life Insurance Company and other holders "of the receiver's certificates whose rights, as such "holders, were adjudged by the Circuit Court of the "United States to appear before the referee ap- "pointed by the Supreme Court in the present case, "and which enjoined the Central National Bank of "Boston and others, whose rights have been ad- "judged by the Circuit Court of the United States "for the Northern District of New York, from "proceeding with the sale under the decree of that "court, are erroneous."

This paragraph is followed by the mandatory words:

"*The judgments of the Supreme Court of New York "and of the Court of Appeals in these particulars are "accordingly reversed, and the cause is remanded to "that court for further proceedings not inconsistent "with the opinion of this court.*"

In the body of the opinion is found this language:

"Those portions of the degree of the Supreme "Court of New York and of the Court of Appeals "which sought to compel the complainants in the "suit pending in the Circuit Court of the United "States to come into the State court and to there "re-litigate their titles to the certificates and the "amounts thereof, and which sought to restrain "them by injunction from proceeding under the "final decree of sale of the Circuit Court, and from "enforcing the other remedies adjudged to them "by that decree, were, in our opinion, erroneous."

The words last quoted unquestionably state the decision of the court. It is, therefore, respectfully

submitted that, if it be corrected or changed, the mandate shall direct:

"That the judgment of the Supreme Court "of New York and of the Court of Appeals "affirming the same are erroneous in so far "as they command the Central National Bank "of Boston, The Massachusetts Mutual Life Insur- "ance Company and other holders of the receiver's "certificates whose rights, as such holders, were "adjudged by the Circuit Court of the United "States, to appear before the referee appointed in "the Supreme Court in the present case, and "which enjoin the Central National Bank and "others, whose rights have been adjudged by the "Circuit Court of the United States for the Northern "District of New York, from proceeding with "the sale under the decree of that court *and* "*from enforcing the other remedies adjudged to* "*them in that decree*, are erroneous; and, there- "fore, it is now here ordered and adjudged by this "court that the judgments of the said Court of "Appeals and of the said Supreme Court of the "State of New York be and the same are hereby "reversed with costs *in these particulars wherein the* "*same are adjudged to be erroneous;*" thereafter adding as in the original mandate, "and that the said ap- "pellants recover against the said respondents Aaron "R. Stevens et. al., one thousand and forty-seven "dollars and seventy cents, for their costs herein ex- "pended and have execution therefor.

"And it is further ordered, that this cause be and "the same is hereby remanded to the said Court of "Appeals for further proceedings not inconsistent "with the opinion of this court."

CHARLES E. PATTERSON,
Of Counsel for Plaintiffs in Error.

IN THE

Supreme Court of the United States.

No. 568 of October Term, 1895.

The Central National Bank of Boston and others,
Plaintiffs in Error,
against
Aaron R. Stevens and others,
Defendants in Error.

Statement for Plaintiffs in Error Relating to Failure to Print Important Parts of the Record and Additions thereto by Defendants in Error.

This case relates to a conflict of jurisdiction between the State and Federal Courts. It is a part of a litigation that has been going on in the State and Federal

Courts of New York for some fifteen years. The record is voluminous, but to a proper consideration of the questions arising it is material that the whole record be before the Court. The Defendant in error has printed about one-fifth of the record, and those portions which he deems material to his view of the case. There are many and important portions of the record which the Plaintiffs in error deem material which have been omitted, including the pleadings and omission of findings of fact which we requested of the Court below. One question relating to the rulings and decision of the Judges of the State Court, which we deem material, we are unable to raise at all because of the omission to print the record in full. Certain papers which are not part of the record are also printed, viz., the last six pages of the record as printed, and, therefore, are not properly before the Court. We file this statement specially, not knowing otherwise how to bring the matter to the attention of the Court, as the Court under the rules, as we understand, declines to hear oral arguments upon interlocutory motions.

MATTHEW HALE,
HENRY D. HYDE,
For Plaintiffs in Error.